

# **FINAL STATEMENT OF REASONS**

## **Update of Initial Statement of Reasons**

There have been no changes in the applicable laws or facts, or to the effect of the proposed regulations, from those described in the Initial Statement of Reasons.

## **Local Mandate Determination**

The proposed regulation does not impose any mandate on local agencies or school districts.

## **Summary and Response to Comments Received During the Public Notice Period of February 14, 2011 through March 21, 2011**

CalPERS received five written comments, which were questions clarifying the scope and requirements of the regulations. In addition to the written comments, CalPERS received two comments via phone. One was requesting a copy of the proposed regulations and the other was a question about requirements for compliance. None of the comments requested or required changes be made to the regulations as written. There was no request for public hearing on or before 15 days prior to the closing of the comment period.

1. Anna Gonzalez of North Los Angeles County Regional Center asked for clarification on what is considered as special compensation. CalPERS provided the definition of special compensation as a benefit(s) paid to employees in addition to regular payrate and earnings. CalPERS also provided the link to the list of approved special compensation items in the CalPERS Public Agency & School Procedures Manual. Gonzalez also asked about disclosure of the portions of health premiums covered by executive management and the employer. CalPERS stated that this information would not be required for disclosure on publicly available pay schedules. It also stated that the purpose and intent of these regulations are to clarify "compensation earnable", compensation for the purpose of calculating retirement benefits and that health premium costs and/or money provided to cover health premiums do not qualify as compensation earnable and cannot be used for retirement benefit calculations.
2. Herbert Pike of Association of Bay Area asked if the proposed regulation will expect them to issue a formal list of top management and their salaries and also asked about the frequency of updates on this information. CalPERS clarified that CCR 570.5 (a) provides a specific criterion in order for the payrate to be considered as compensation

earnable and reportable for use in calculating members' retirement benefits. CCR 570.5(a) (2) and (3) require the position title for every employee position and the payrate for the respective position identified, not the names of the individuals. In response to question on frequency of updates, CalPERS stated that in order for payrate to be considered as reportable for retirement calculation purposes, the information should be updated according to the procedure identified in CCR 570.5 and as appropriate. In plain terms, if there are changes in payrate which exceed the monetary parameters as identified on the pay schedule, an update is necessary as often as changes occur in order to be considered for use in calculating the member's benefit. CalPERS pointed out that the pay schedules would not necessarily need to be updated because an employee's payrate changes. However, if the employee's payrate exceeds the amount identified on the pay schedule, an update would be required in order to be considered in the calculation of members' benefits.

3. Bonnie Rasband of Marin County Office of Education asked how they can handle situations such as having a professional expert and/ or sub that doesn't have salary schedule and having a salary that varies according to experience. CalPERS was unable to provide a definitive answer on the situation. However, CalPERS provided scenarios such as:
  - If their governing body has approved an employee position at a particular rate of pay or within a pay range, then the position and the pay or pay range, as well as the manner in which it is paid, must be included on the publicly available pay schedule.
  - If the "professional expert and/or sub" is performing service for their agency in a capacity other than as a common law employee (i.e. as an independent contractor), then the pay need not be included on the pay schedule since it would not be reportable to CalPERS.
4. Richard Battles of Howell, Moore and Gough, LLP on behalf of Goleta Sanitary District (GSD) asked if General Manager's Employment Agreement with GSD qualifies as the schedule or document required under the proposed regulations. CalPERS confirmed that the General Manager's salary will be included on the publicly available pay schedule.
5. Mary Kimbell-Smith of Consumnes Community Services District via Noel Nicklay of California Special District Association was concerned about the load of work for taking all the special pays in each labor document , calculating what they would add at each step of a salary range for each position, and publishing them. CalPERS stated that this question applies to existing Regulation 571, subdivision (a) which contains the exclusive list of special compensation items for contracting agency and school employers. This part of the regulation is not being amended. CalPERS

explained that the proposed amendment to Regulation 571, subdivision (b) clarifies what information must be contained in a written labor policy or agreement, and how the employer is to maintain that information.

6. Julie Carter of City of Dublin requested via phone a copy of the newly proposed CCR 570.5 and proposed amendment to CCR 571. CalPERS provided her an electronic copy of the language for the proposed regulations via email.
7. Kate of Woodside Fire Protection District asked via phone how CalPERS will enforce agencies to comply with these new regulations within 30 days after they are effective. CalPERS requested the commenter to return call to discuss response but the call was never returned.

### **Alternatives Determination**

CalPERS has determined that no reasonable alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.